IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 429 OF 1995

Vijaysing Kisansing Pardeshi,
residing at Gajnan Chowk,
Deepak Apartment, H.No.4612,
Panchavati, Nasik ...Appellant.

Versus

The State of Maharashtra ...Respondent

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Shri. S.M. Gorwadkar with Rohit Pawaskar, Advocates for the appellant.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 11TH OCTOBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant (original accused No.1) challenges the judgment and order dated 08.08.1995 passed by the II Additional Sessions Judge, Nasik in Sessions Case No.72 of 1995. By the said judgment and order, the learned Sessions Judge convicted the appellant under Sections 498-A and 306 of I.P.C. For the offence under Section 498-A, the appellant has been sentenced R.I. for two years and to pay fine of Rs.500/- i/d R.I. for three months. For the

offence under Section 306 of I.P.C., the appellant has been sentenced to R.I. for five years and to pay fine of Rs.500/- i/d R.I. for six months.

. It may be stated here that alongwith the appellant, three other persons came to be tried i.e. Kisansing Lotansing Pardeshi, Sau. Kusumdevi Kisansing Pardeshi and Kum. Sugandha Kisansing Pardeshi who are the parents and sister of the appellant respectively. The said accused persons came to be acquitted by the impugned judgment and order of all the charges.

2. The prosecution case briefly stated is as under:-

. The complainant P.W.1 Kunjansing Hirasing Thakur was the father of deceased Sangeeta. Kunjansing Thakur was resident of Washim, District Akola. His daughter Sangeeta was married to the appellant on 14.2.1994. After the marriage, Sangeeta resided with the appellant and his family at Panchavati Nasik. After the marriage, the complainant went to meet his daughter Sangeeta, at that time Sangeeta began to weep and she told him that she was beaten by her husband, mother-in-law and father-in-law. Sangeeta further told him that her husband and her in-laws had asked her to get Rs.25,000/- from her

father for purchasing a rickshaw. She also told him that all these accused persons complained to her that they were not given monies in the marriage. The complainant took Sangeeta with him to his house. Sangeeta resided with him for few months. During this period, the husband and the father-in- law of Sangeeta came to take her back, however, the complainant did not send Sangeeta with them. The husband of Sangeeta volunteered to give an undertaking on stamp paper that he would treat Sangeeta nicely. Accordingly, the said undertaking (Exh.16) came to be executed. One month thereafter, the complainant met Sangeeta, she told him that she was being harassed and ill-treated by her husband, sister-in-law and mother-in-law. On 31.12.94 the complainant received a wireless message that his daughter Sangeeta had died due to 100% burn injuries. The complainant and his family members went to Nasik. Thereafter, his complaint (Exh.17) came to be recorded. The body of Sangeeta was sent for post mortem. Sangeeta was found to have 100% burn injuries. The cause of death was given as shock due to 100% burn injuries. After completion of investigation, charge sheet came to be filed.

3. In due course, the case was committed to the Court of Sessions. The charge came to be framed

against the appellant and three other accused persons under Sections 498-A and 306 r.w. 34 of I.P.C. All the accused pleaded not guilty to the said charges and claimed to be tried. The defence of the accused is that of total denial.

4. During the course of trial, the prosecution had examined in all six witnesses. Out of the said witnesses, P.W.1 Kunjansing Thakur, P.W.5 Deepaksing Pardeshi and P.W.4 Sarswatibai Rajput are the relatives of deceased Sangeeta. On the basis of evidence led by the prosecution, the learned Sessions Judge acquitted the original accused Nos. 2 to 4 for the offence under Sections 498-A and 306 r.w. 34 of I.P.C. However, the learned Sessions Judge convicted the appellant under Sections 498-A and 306 of I.P.C. and sentenced him as stated in para 2 above. Hence, this appeal.

5. I have heard Shri. Gorwadkar with Shri. Pawaskar, learned advocates for the appellant and Shri. Shitole, the learned A.P.P. for the respondent-State. I have also perused the entire material on record. After carefully going through the entire material, I have reached the conclusion that this appeal deserves to be allowed.

6. The conviction of the appellant is founded mainly on the following aspects;

a. The evidence of P.W.1 Kunjansing Thakur who is complainant and father of deceased Sangeeta.

b. The evidence of P.W.5 Deepaksingh Pardeshi who is the brother of deceased Sangeeta.

c. The evidence of P.W.4 Sarswatibai Rajput who is maternal aunt of deceased Sangeeta.

. For the reasons stated hereinafter, in my view, the evidence of these three witnesses cannot be said to be beyond reproach.

7. I would firstly like to deal with the evidence of P.W.1 Kunjansing Thakur. Kunjansing Thakur is the complainant in the present case. He is also the father of deceased Sangeeta. The prosecution story has been taken from the evidence of P.W.1 Kunjansing Thakur as deposed by him in his examination in chief, hence, I do not want to

repeat the same here in detail. In addition to that Kunjansing Thakur has deposed that after the death of Sangeeta, on 4.1.95 he received a letter (Exh. 18) written by Sangeeta to him prior to her death. Xerox copy of the said letter alongwith its envelope have been produced (Exh.20) by this witness before the police. This witness has also produced (Exh.21) which is another letter written by Sangeeta. As per this witness this letter was found in their house at Washim some days after the death of Sangeeta. However, on perusal of these two letters (Exhs.18 and 21), it is seen that there is no reference to demand of Rs.25,000/- and any ill-treatment or harassment to Sangeeta on account of any such demand. As far as the letter (Exh.21) is concerned, it is pertinent to note that the appellant has not been specifically asked about the said letter in his statement under Section 313 of Cr.P.C. In such case the contents of the letter cannot be used against the appellant.

8. The evidence of P.W.5 Deepaksingh Pardeshi who is the brother of Sangeeta, is on the same lines as that of P.W.1 Kunjansing Thakur. The prosecution has also examined P.W.4 Sarswatibai Rajput who is the maternal aunt of deceased Sangeeta. P.W.4 Sarswatibai has stated that during the "Holi" festival Sangeeta came to her house. She found

that Sangeeta was not walking properly. On making enquiry with Sangeeta, Sangeeta informed that she had beaten by her husband. Sangeeta also informed that there were quarrels in the family all the while and they were asking her to bring Rs.25,000/- from her parents. P.W.4 Sarswatibai saw some marks on the body of Sangeeta. However, it is pertinent to note that during the same period Sangeeta had been to the house of her parents and neither her father nor her brother spoke about Sangeeta not being able to walk properly or that she had any marks on her body. This raises some doubts in the mind in respect of the evidence of P.W.4 Sarswatibai. The main reason for the harassment of Sangeeta appears to be the demand of Rs.25,000/- for purchasing auto rickshaw. P.W.4 Sarswatibai has stated that after the marriage the appellant purchased a new rickshaw. In view of the evidence of this witness that the appellant had already purchased the rickshaw, there was no question of him making any demand of money to purchase a rickshaw. In view of the evidence of P.W.4 Sarswatibai, the evidence of P.W.1 Kunjansing and P.W.5 Deepaksing appears to be un-reliable.

9. In the present case though P.W.1 Kunjansing and P.W.5 Deepaksing have deposed about Sangeeta informing them of harassment at the hands of the

appellant and his family members. The reason for harassment is given as demand of Rs.25,000/- for purchasing an auto rickshaw. However, the said demand does not appear in the bond or in any of the letters written by Sangeeta. Moreover, in view of the evidence of P.W.4 Sarswatibai it does not appear probable and believable that there was a demand for Rs.25,000/- for purchasing an autorickshaw.

10. Though P.W.1 Kunjansing and P.W.5 Deepaksing have deposed that the appellant had executed a bond on stamp paper that he would treat Sangeeta properly. No doubt in the said bond the appellant has promised that he would treat Sangeeta properly, however, the bond states that she would also not trouble him nor cause any situation which would give rise to danger to life. In the said bond, Sangeeta has further stated that she would not unnecessarily insult the members of the family of the appellant. It is further stated in the said bond that both of them have settled their disputes. On plain reading of this bond, it is clear that it was not only the appellant who was to blame but that there was fault on the part of Sangeeta also. In this connection, it would also be pertinent to note the evidence of P.W.1 Kunjansing in which he has admitted that there might be some mistakes

committed by Sangeeta in her matrimonial home. P.W.1 Kunjansing has further stated that it is true that Sangeeta had very high expectations from her husband and in laws. It appears that on account of this high expectations, Sangeeta did not behave properly in the matrimonial home and thus there were disputes. As stated earlier that there was a demand of Rs.25,000/- to purchase rickshaw cannot be believed. No other reason for harassing or ill-treating Sangeeta has been brought on record. It appears that Sangeeta was unhappy in her matrimonial home on account of high expectations on her part in respect of her husband and in-laws, this has led to disputes in the matrimonial home and which has ultimately resulted in the death of Sangeeta. In the facts of the present case, looking to the evidence on record, it cannot be said to be conclusively proved that the appellant had treated Sangeeta with cruelty. In such case, the conviction of the appellant under Section 498-A and also the conviction under Section 306 of I.P.C. deserves to be set aside.

11. In the result, the conviction and sentence of the appellant under Sections 498-A and 306 of I.P.C. is set aside. The appellant is acquitted therein. The appellant is on bail, his bail bond shall stands cancelled. Fine amount, if any,

deposited by the appellant, be refunded to him. Criminal appeal is allowed.